

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH-UD-DIN ... MEMBER (Judicial)**

*Service Appeal No.894/2022*

Date of presentation of Appeal.....30.05.2022  
Date of Hearing.....08.12.2023  
Date of Decision.....08.12.2023

**Muhammad Imran**, son of Shah-e-Room Bacha, Naib Qasid, District Revenue Office, District Mohmand .....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa**, through Secretary Board of Revenue Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Senior Member Board of Revenue**, of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **Commissioner**, Peshawar Division, Peshawar.
4. **Deputy Commissioner**, Mohmand.
5. **Maqsood Khan**, (Survey Helper) Finance Department, District Mohmand.
6. **Waqar-ul-Hassan**, Naib Qasid, Additional Deputy Commissioner, District Mohmand. ....(**Respondents**)

Present:

Syed Bilal Bacha, Advocate.....For the appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney .....For the official respondents

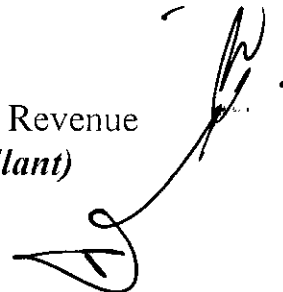
Mr. Muhammad Anwar, Advocate.....For the private respondents

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*Service Appeal No.895/2022*

Date of presentation of Appeal.....30.05.2022  
Date of Hearing.....08.12.2023  
Date of Decision.....08.12.2023

**Khalid Khan**, son of Saddam Khan, Process Server, District Revenue Office, District Mohmand .....(**Appellant**)



Versus

1. **The Government of Khyber Pakhtunkhwa**, through Secretary Board of Revenue Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Senior Member Board of Revenue**, of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
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6. **Waqar-ul-Hassan**, Naib Qasid, Additional Deputy Commissioner, District Mohmand. ....(**Respondents**)

Present:

Syed Bilal Bacha, Advocate.....For the appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney .....For the official respondents

Mr. Muhammad Anwar, Advocate.....For the private respondents

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**APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED PROMOTION ORDER DATED 26.01.2022 AND NOT DECIDING THE APPEALS OF THE APPELLANTS IN STATUTORY PERIOD OF 90 DAYS.**

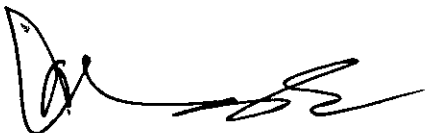
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**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment this appeal and connected appeal No. of titled are going to be decided as both are similar in nature and involving same point to be determined, therefore, can be conveniently taken up and decided together.

2. **Appeal No.894/2022:**

According to the memorandum and grounds of this appeal the appellant was appointed and serving as Process Server BPS-2 in the office of the Deputy Commissioner Mohmand; that the office of Respondent No.4 issued seniority list on 08.11.2021 of class IV employees and the appellant was senior most

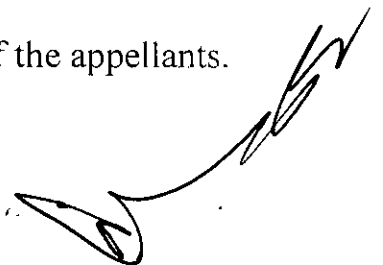


literate class-IV employee; on 31.12.2021 another seniority list was issued by Respondent No.4 wherein some juniors were placed senior to the appellant and on the basis of said list, the juniors were promoted to the post of Junior Clerk vide impugned promotion order dated 26.01.2022 ignoring the appellant; that the appellant filed departmental appeal, which was not decided within statutory period of ninety days, hence, this appeal on the grounds detailed in the grounds of appeal.

3. Appeal No.895/2022:

According to the memorandum and grounds of this appeal the appellant was appointed and serving as Process Server BPS-2 in the office of the Deputy Commissioner Mohmand; that the office of Respondent No.4 issued seniority list on 08.11.2021 of class IV employees and the appellant was senior most literate class-IV employee; on 31.12.2021 another seniority list was issued by Respondent No.4 wherein some juniors were placed senior to the appellant and on the basis of said list, the juniors were promoted to the post of Junior Clerk vide impugned promotion order dated 26.01.2022 ignoring the appellant; that the appellant filed departmental appeal, which was not decided within statutory period of ninety days, hence, this appeal on the grounds detailed in the grounds of appeal.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

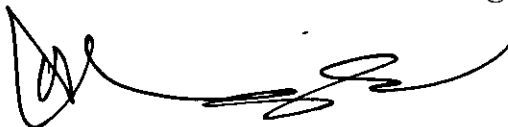


5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents and learned counsel for the private respondents.

6. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney and the private counsel refuted the same by supporting the impugned order(s).

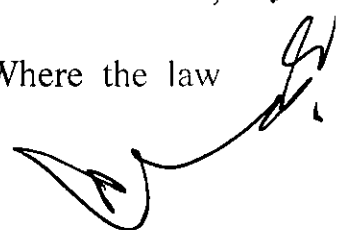
7. We have perused the final seniority list appended with the appeal as well as the replies of the respondents. The seniority lists annexed by the parties are the copies of the original and are the same. In the seniority lists attached by the parties, the appellant of this appeal is shown at serial No.12 while the appellant (Khalid Khan) of the connected appeal at serial No.17. Similarly the private respondent Maqsood Khan is figured at serial No.13 and the other private respondent Waqar ul Hassan is at serial No.19. Both the private respondents are shown junior to the appellant of this appeal while one of the private respondent Waqar ul Hassan is shown junior to the appellant of the connected appeal. The learned counsel for the private respondents relies on a Notification dated 25.06.2019 wherein it is provided that thirty percent posts of Junior Clerks were to be filled by promotion on the basis of seniority-cum-fitness from amongst the Qasids, Naib Qasids and Process Server including holders of other equivalent posts in the district concerned with two years' service as such, who have passed Secondary School Certificate Examination from a recognized Board. There is a note given under the above provision, which is as under:

*"Note: For the purpose of Promotion, joint seniority list of Qasids, Naib Qasids and Process Servers including holders of other equivalent*



*posts shall be maintained with reference to the date of their matriculation or appointment whichever is later."*

The seniority list appended with the appeal and the replies is not in accordance with the above provision of the notification rather the appellant of this appeal is shown senior to both the private respondents and the appellant of the connected appeal is shown senior to one of the private respondents. The promotions were to be made on the basis of seniority-cum-fitness and for the purpose of promotion, joint seniority list of Qasids, Naib Qasids and Process Server including holders of the equivalent posts was to be maintained. As one of the appellant is shown senior to both of the private respondents while the appellant of connected appeal is shown senior to the private respondent Waqar Ul Hassan, therefore, the promotions made are not in accordance with the seniority list maintained by the office of the Deputy Commissioner Mohmand. The reply of the official respondents, though, says that the private respondents were senior to the appellants but the seniority list speaks otherwise. True that the private respondent might be senior in view of the above note of the notification but first they ought to have been placed at the proper place in the seniority list in accordance with the provisions of the notification and then they or other eligible candidates could be considered for promotion as required by the provisions of the above notification. When law requires a thing to be done in a particular manner then it would be nullity in the eyes of law, if not performed in that very prescribed manner. Reliance is placed on 2007 SCMR 1086 titled "*Muhammad Akram versus Muhammad Zainab*" and 2023 SCMR 1502 titled "*M/s. Tri-Star Industries (Pvt) Limited v. TRISA Burstenfabrik AG Triengen & others*", wherein the Supreme Court of Pakistan has reiterated that "Where the law



prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all."

Seeing the appeals from the above angle we are unable to maintain the impugned promotion order of the private respondents because it is not made in accordance with the seniority list maintained by the official respondents.

Before parting with we may observe that the official respondents may correct the seniority list in accordance with the terms of the Notification of 25.06.2019 and may proceed for the desired promotion. Appeals are decided in the above manner. (Copy of this judgment be placed on file of connected Service Appeal No.895/2022 titled "Khalid Khan Vs. Government of Khyber Pakhtunkhwa").

Costs shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8<sup>th</sup> day of December, 2023.*



**KALIM ARSHAD KHAN**  
Chairman





**SALAH-UD-DIN**  
Member (Judicial)

30<sup>th</sup> August, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents and learned counsel for private respondents No. 5 & 6 present.
2. Learned counsel for the appellant seeks some time for preparation of arguments. Adjourned. To come up for arguments on 08.12.2023 before the D.B. Parcha Peshi given to the parties.

SC  
K-203T  
Peshawar


  
(Salah-ud-Din)  
Member (Judicial)

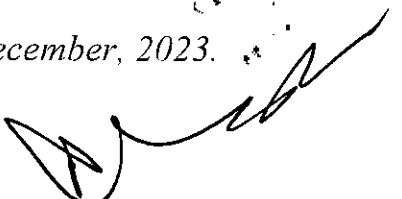
  
(Kalim Arshad Khan)  
Chairman

**ORDER** *Queen Amin\**

8<sup>th</sup> Dec. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Private respondents present through counsel.
2. Vide our consolidated judgment of today placed on file, we are unable to maintain the impugned promotion order of the private respondents because it is not made in accordance with the seniority list maintained by the official respondents.
3. Before parting with we may observe that the official respondents may correct the seniority list in accordance with the terms of the Notification of 25.06.2019 and may proceed for the desired promotion. Consign.
4. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8<sup>th</sup> day of December, 2023.*

  
(Salah-ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman